

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

TRANSCARE CORPORATION, et al.,

Debtors.

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Chapter 7
Case No. 16-10407 (SMB)
(Jointly Administered)

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SALVATORE LAMONICA, as Chapter 7
Trustee for the Estates of TransCare
Corporation, et al.,

Plaintiff,

- against -

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Adv. Proc. No. 18-1021 (SMB)

LYNN TILTON, PATRIARCH PARTNERS
AGENCY SERVICES, LLC, PATRIARCH
PARTNERS, LLC, PATRIARCH PARTNERS
MANAGEMENT GROUP, LLC, ARK II CLO
2001-1 LIMITED, TRANSCENDENCE
TRANSIT, INC., and TRANSCENDENCE
TRANSIT II, INC.,

Defendants.

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**DEFENDANTS' NOTICE OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that pursuant to the accompanying Memorandum In Support of Defendants' Motion for Partial Summary Judgment, Defendants' Local Rule 7056-1(b) Statement of Material Facts Not in Dispute, and the Declaration of Michael T. Mervis and the exhibits annexed thereto, Defendants, through their undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York (the "Bankruptcy Court"), One Bowling Green, Courtroom 723, New York, New York 10004-1408, on **July 22, 2019 at 10:00 a.m.**, for entry of an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, granting summary judgment in Defendants' favor on the following Counts in the Amended Complaint (the "Motion"):

- A. Count I (Breach of Fiduciary Duty of Loyalty and Good Faith);
- B. Count III (Equitable Subordination);
- C. Count IX (Automatic Stay Violation);
- D. Count XII (Payment Subordination);
- E. Count XIII (Limitation on Liens) as against Defendant Patriarch Partners Agency Services, LLC; and
- F. Count XIV (Avoidance and Turnover).

PLEASE TAKE FURTHER NOTICE that any response or objection ("Objection") to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the this Court's Local Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the

Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 so as to be received no later than **July 15, 2019 at 4:00 p.m.** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if no Objection is timely filed and served with respect to the Motion, the Defendants may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed **Exhibit A**, which order may be entered with no further notice or opportunity to be heard.

Dated: June 20, 2019
New York, New York

PROSKAUER ROSE LLP

By: /s/ Michael T. Mervis
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Attorneys for Defendants

Exhibit A

[Proposed Order]

UNITED STATES BANKRUPTCY COURT
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Defendants.

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[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Upon Defendants' Motion for Partial Summary Judgment (the "Motion"); and the Court having considered the Motion and Plaintiff's Opposition to the Motion, Defendants' Reply, and the arguments of counsel concerning the Motion at a hearing before the Court on July 22, 2019 (the "Hearing"); and after due deliberation thereon; and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Court finds that the legal and factual bases for the Motion have been established. There are no genuine issues of material fact as to Counts I, III, IX, XII, XIII (as to Defendant Patriarch Partners Agency Services, LLC (“PPAS”)) and XIV.
2. The Motion is GRANTED as set forth herein.
3. Judgment is granted in favor of Defendants as to Counts I, III, IX, XII and XIV of the Amended Complaint [Dkt. 53].
4. Judgment is granted in favor of PPAS as to Count XIII of the Amended Complaint.
5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

DATED: _____, 2019
New York, New York

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE